AN

ARGUMENT

IN DEFENCE

OF THE

HOSPITALLER

OF

St. THOMAS SOUTHWARK

AND OF

His Fellow-Servants and Friends

in the ſame Houſe.

K Turner (2)

LONDON,

Printed in the Year, MDCLXXXIX.

AN
ARGUMENT
IN DEFENCE
OF THE
HABEAS CORPUS
OF
THOMAS SOUTHWARK
AND OF
His Fellow-Servants and Friends,
in the late June Hous.

BRITISH MUSEUM

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LONDON,
Printed in the Year, MDCLXXXIX.

To the Right Honourable
The LORD-MAYOR of the City of *London*,
and to the Honourable the Court
of Aldermen.

Right Honourable,

I Confeſs it was a great ſurprize to me to ſee an Order of Court made for my Ejectment out of this Houſe, in behalf of Mr. Hughes the old Illegall Incumbent, without being firſt heard what I had to ſay for my ſelf, but an aftergame being better then no Game at all, I haue here made the beſt I can of a bad Market, and have endeavoured to lay before you a true ſtate of the Caſe, humbly Entreating you to conſider a little further before you determine finally and Peremtorily in the matter, againſt the only Son of a Citizen like your ſelves, who hath upon that account an equitable pretence to your favour, to ſay nothing of that Juſtice which every Forreign Petitioner may claim.

I am ſatisfy'd by the wording of your ſaid Order that you have been miſinformed in the nature of the Controverſy betwixt Mr. Hughes and me, as if he had a legall right accruing to him upon the reſtitution of the Charter, which I am well aſſured he hath not, and I muſt appeal to all indifferent perſons whether I have not ſufficiently prov'd it.

This is our plain miſapprehenſion, which ſeems to me to evacuate the ſaid Order, becauſe it is Founded upon it, and if it had not been for that, it appears to me by the expreſs tenour of it, that no ſuch Order had ever been made.

Another is, that the very Order it ſelf in whatſoever words it be conceived, ſuppoſeth the Cognizance of this matter to ly immediately and properly before you, which I humbly conceive it doth not, but before the King, till he ſhall be pleas'd to remit it back to you, which I ſhall be ſo far from being diſſatisfy'd at, that I repoſe a perfect confidence in your goodneſs and juſtice to me, and I attribute it to nothing but a miſunderſtanding that any prejudice hath been done me in this affayr. You ought not, my Lord and Gentlemen, to think your ſelves depretiated or undervalu'd in that I ſay, the King is your Superiour in thoſe things which belong properly and legally to his inſpection, when ever he pleaſeth to concern himſelf about them, and which he

he hath actually taken into his immediate care; King Charles the Second, of Glorious and Bleſſed memory, having made a Royall regulation in this Houſe, which cannot be alter'd, as I am humbly of opinion, by any leſſer power without the Royall aſſent. Neither is it or can it be thought any diminuition to your Honourable Court, that you ſhould reverſe the ſentence you have paſt, when even the greateſt Lawyers do frequently alter their minds, and the decrees of Chancery reverſing one another are a plain indication that even they are not infallible, whoſe buſineſs and employment it is to underſtand theſe matters better then others; I leave it to your Lordſhip and the Court to conſider among many other things that appear to be foul againſt him, whether the King if it were referred to his Majeſty to determine, would think it fit to feed with his own proper bread, or to beſtow the rewards of Virtue and Obedience upon the Patron and Encomiaſt of his Grandſire's Murther. I wiſh your Lordſhip and the Honourable Court all Happyneſs and proſperity, and I pray as for the Peace of the Land of Canaan *in generall, this Land of our Nativity that flows with Milk and Honey, ſo more eſpecially for that of your* Jeruſalem, *and that they may proſper that love it. I am, may it pleaſe your Lordſhip and the Honourable Court,*

Your Honour's moſt humble,

Obedient and obliged Servant

John Turner.

THE

THE

CASE

Between Mr. *Hughes*, the late pretended Hoſpitaller of St. *Thomas Southwark*, and Mr. *Turner* the preſent Lawfull Incumbent of the ſame, truly Stated.

Qui aliquid Statuerit parte inaudita altera
Æquum licet Statuerit, haut æquus fuerit.

Ad orbilium Hugonem

Carpere vel noli noſtra, vel Ede tua.

BEcauſe Mr *Hughes* the late pretended Hoſpitaller of St *Thomas Southwark*, renews his pretenſions upon the Reſtitution of the Charter, as if there were ſuch a neceſſary Connexion betwixt old Men and old Franchiſes, that both muſt unavoidably be reſtored together, therefore I am obliged in my own juſt and neceſſary defence, in oppoſition to the falſe and unjuſt inſinuations of an Illegall pretender, to State the whole matter as it is in it ſelf, and to ſuggeſt ſuch conſiderations as do naturally ariſe from it, to keep the Legall poſſeſſion I am in, and to preſerve my ſelf from his intended intruſions and uſurpations upon it.

Mr *Hughes* was ejected at the ſame time or within a very little while after, that Judgment was had and Entred upon the *Quo Warranto* againſt the Charter of this Famous City, and therefore this is all which he urgeth in his defence, the Charer is reſtored, and ſo am I: For we are more nearly related then the two *Tyndaridæ*, (Mr *Hughes*, who is a Schoolmaſter knows who I mean) that uſe to live and dye by Turns, and like *Hippocrates* his twins, we both of us ſhare in the ſame common Fate, we laugh in conſort, and we weep together.

Now to anſwer the more effectually this ſhrewd and Peſtilent objection raiſed againſt me, by a man, that I hope, underſtands Grammer a little better then he ſeems to do Senſe, I beg leave in the firſt place to lay down Mr *Seymours* Caſe, as it was ingeniouſly and truly Stated by himſelf, together with the opinions of three of the beſt Lawyers and perſons of the moſt unqueſtionable Honour and Integrity, as well as Skill in their Profeſſion, that this Nation affords upon it, and then to raiſe ſuch obſervations from the whole, as affect my Caſe as well as his, and to make ſuch other animadverſions and remarks upon the Circumſtances peculiar to Mr *Hughes* or me, as the occaſion calls for, which I will do with all the Clearneſs and brevity I am able, without giving my ſelf that Latitude either for anger or wit, which Mr *Hughes* his provocations would incite me to, or which his untoward Hiſtory would afford me, and in a word, without any other reflection, then what the matters of Fact eſſentiall to my defence do of neceſſity conſtrain me to, reſerving his

life to be written by ſome other hand, if there be any that think it worth their while, or if there be any that can take a pleaſure, which I find to be very unnaturall to me, in expoſing the Faults or Follies or in upbraiding the complexionall misfortunes of little or imprudent men.

The Caſe as it was Stated by Mr S. and was reſolved by thoſe Learned Gentlemen, it as follows.

The Caſe.

KIng *Edward* the *6th.* having Founded and Endowed *St. Thomas* Hoſpital in *Southwark*, grants the Lands and Revenues belonging to the ſame, to the Mayor Commonalty and Citizens of the City of London, for the benefit of Sick and Lame indigent Perſons, with liberty in his Charter reſerved to viſit and enquire into the management of the truſt.

According to the uſage of the City, the houſe hath been always governed by Citizens and others appointed by the Court of Aldermen, the Governours of the houſe for the time being, and the Court of Aldermen, according to the laws and cuſtomes of the City, choſe *A.* their Clerk.

A *Quo Warranto* being afterwards brought againſt the City and Judgment *Anno* 1683. being thereupon had and enter'd, a Commiſſion was thereupon granted to certain Aldermen and others to regulate the ſaid Hoſpitall, and (*inter alia*) to appoint Governours and Officers of the houſe.

The ſaid Commiſſioners appoint *B.* to be Clerk of the houſe inſtead of *A.* during the pleaſure of that Court of Commiſſioners.

His Late Majeſty (*James the Second, when the Caſe was ſtated*) reſtores to the City their antient government, Lands, Tenements, Franchiſes, Priviledges, *&c.* and ſoon after iſſues out his Proclamation for reſtoring Corporations, *&c.* dated the 17*th* of *October* 1688. and diſſolves the ſaid Commiſſion.

The Caſe being thus ſtated the queſtion is.

Whether by the ſaid reſtitution of the Charter, *&c.* and by the ſaid Proclamation or either of them (*B* not having been diſcharged of his office by the Commiſſioners) *A* hath any right to be reſtored to his office of Clerk eſpecially if the Court of Aldermen hath ſince the reſtitution of the Charter, confirmed all officers belonging to the City in their reſpective places and the right ſhould appear in that Court to chooſe a Clerk of the ſaid *Hoſpitall*.

Sr. Francis Pemberton's reſolution of this Caſe.

I conceive that the Court of Aldermen being the perſons who authoriſed the Governours of this Hoſpitall by their order, when the Corporation of the City of *London* was diſſolved by the Judgment in the *Quo Warranto*, the authority of thoſe Governours of the Hoſpitall ceaſed, and they cannot act again without a new order or appointment of the Court of Aldermen, and I conceive the King's proclaimation in *October*, 1688. doth not give any Authority to the former Governours of the hoſpitall to Act by the former Authority to them given by the former order of the Court of Aldermen, but they ought to be Commiſſionated by a new order, before they Act as Governours.

I do apprehend this place of Clerk to the Governours not to be a ſtanding

Office,

Office, but rather an Employment in it's nature, to be put in or out by the Court of Aldermen if they pleaſe, or, if the Court of Aldermen pleaſe, by the Governors, but ſuch Clerk hath no fixt intereſt in his Employment, and A. hath, I conceive, no right to this place, unleſs he ſhould ſee a new choſen and appointed thereunto by a new Order, and the Kings Proclamation in *October* extends to the enabling and empowering all members & Officers of Corporations to act as they might have done before the *Quo Warranto's* were brought, but that extends only to what they might do, as members or Officers of thoſe Corporations, but not to any collaterall matters, which they might have done by virtue of any collaterall Commiſſions derived from thoſe Corporations, as the caſe of theſe Governours and clerk of this Hoſpitall are.

And I conceive that any Governours of this Hoſpitall appointed by thoſe who acted as Mayor and Aldermen of *London* by virtue of any *Letters Patents*, ſince the Judgment in the *Quo Warranto*, are all diſabled to act or do any thing as Governours, *Letters Patents* to thoſe Mayors and Aldermen being ſet aſide by this Kings Proclamation in *October* laſt, and all the authorities derived under thoſe *Letters Patents*, as depending on them, falling with them.

Fr. Pemberton.

Mr. Pollexfen's *Opinion of the ſame* Caſe.

I conceive that the Clerk hath not any Office or Eſtate, but is only a Servant to the Governours, not within the Charter of reſtitution, or the Proclamation, claiming any legall right or intereſt; but is at will of the Governours, and they at their will and pleaſure may put out or take in, or employ in the place whom they think fit.

Hen. Pollexfen.
Jan. 11. 1688.

Sir John Holt's *Opinion to the ſame purpoſe.*

I conceive that the Clerk not being a Charter Officer is not reſtored by the Kings Proclamation, which extends only to ſuch Officers and members of the Corporations, which were made upon the Originall conſtitution, or by virtue of ſome Charter, but the Clerks place is only a Service or an imployment, which is wholly at the diſpoſall of the Governours, as they ſhall think fit.

J. Holt. January. 15. 88.

The Firſt obſervation I ſhall make from hence ſhall be taken from the ſtateing of the Caſe it ſelf, wherein it is ſet forth that this Hoſpitall being Founded by King *Edward* the Sixth, the care and truſt of it from time to time was committed to the Mayor, Aldermen and Commonalty of the City of *London*, reſerving to himſelf and Succeſſours a liberty to viſit and enquire into the management of the truſt, and without any ſuch expreſs reſervation in the *Charter* it ſelf, it is but reaſonable and Juſt that in all Hoſpitals that are of Royal Foundation, the King ſhould be the proper and Supream Viſitor, becauſe without this the King and his Succeſſours can have no Aſſurance, but that his Royal Intentions may be diſappointed, his Charity Embezled, and the truſt

truſt which is repoſed in certain Perſons for the due management of it betrayed, and beſides the Nature of the thing added to the expreſs reſervation of our Royal Founder in his Charter, the King by Act of Parliament is the Supreme Viſitor of Hoſpitalls and Publick Charities, to ſee that they be conferred upon fit and ſuitable objects, and managed by Officers well qualify'd for their Employments.

Now from hence it appears that the avoidance of the Charter and the Regulation of the Hoſpitalls that Followed quickly after it, have no manner of Connexion with each other; it is true indeed that after Judgment was had and entred againſt the Charter, all truſts that were repoſed in the City, as a Corporation, did of neceſſity fall together with it, but yet it is Equally true that the King might have viſited and regulated this and other Hoſpitalls though the Charter had ſtood, he being Supream Viſitor and Inſpector of the ſame, but more Eſpecially of Royal Hoſpitalls that owe their Foundation, derive their Conſtitution, and receive their very being from the Crown, ſo that it is plain that the old Officers might have continued in this houſe, if the King had ſo pleaſed, notwithſtanding the Charter of the City was made void, and that the deſtruction of the Charter had no immediate or conſequentiall Operation upon the Officers of this Houſe, they not being Charter Officers, but Perſons Employ'd in a truſt under the King, whom he may always place or diſplace at his pleaſure, and of whoſe fitneſs and capacity for their reſpective Employments he is the Supreme and unaccountable Judge. *What therefore can the man do that cometh after the King?* Eccl. 2. 12. Or what inferiour Authority can annull that which the Supreme hath ordered and appointed? To be plain in a Caſe that is not to be dallyed with, my meaning is this, that during the Life of that Glorious & Bleſſed Prince King *Charles* the Second, it would not have been Lawful for any inferiour Authority, though the Charter had been reſtored, to diſplace any Officer of his Appointment in this houſe, by virtue of any Arbitrary Power lodged in them, without a cauſe of Miſdemeanor, or of incapacity particularly aſſigned & repreſented to the King himſelf, whoſe gifts, that are properly and Legally in his diſpoſall, cannot be taken away by any ſubordinate Power, without his conſent Firſt had and obtained in the matter. But yet I grant, that now after the deceaſe of that incomparable Prince, and the Reſtitution of the Charter, all the Truſts that were Formerly lodged in the City do naturally return together with it, and that the ordinary Viſitation of this Hoſpitall is in them, unleſs the King and Queen ſhall pleaſe to interpoſe, which they may by Law do as often as they think Fit, and take the Juriſdiction in General or the ordering of any particular matter or affair into their own hands, but yet ſtill it continues good, that that which was Legally Eſtabliſh'd by a Lawfull and rightfull King, cannot, and ought not to be changed or altered by any Subordinate Power or Authority whatſoever, without a Cauſe aſſigned, without a Grievance prov'd, without a fault alledg'd, in the Perſon that is intended to be diſplac'd, becauſe this is not ſo much to claim a Juriſdiction over A. or B. to whom I grant as Governors, they are Superiour, but to Challenge and Arrogate a Power to themſelves Superior to that, From which alone they derive it, and that is From the King, which all Men muſt needs ſee to be impoſſible & abſurd. Neither let any man here object that we were placed here by the Kings Commiſſioners not by the King himſelf, and that the Commiſſion was Arbitrary and Illegall. For Firſt, it is a Maxim in Law and reaſon, *quod quis facit per alium fa-*

cit

cit per ſe, what the King does by his Commiſſioners he does by himſelf, and though I will not meddle with the Legality of the proceeding in the avoidance of the Charter, and entring up Judgment againſt it, yet thus much I will ſay, that the Charter, whether right or wrong, being Actually voided, there was no way left to manage the Affairs of the City but by Commiſſion from the King, and that what is neceſſary in the preſent Circumſtances for the quiet and peaceable Adminiſtration of ſo Populous a City, may be ſaid at leaſt to have Secondary Lawfullneſs, a Lawfullneſs deriving and holding from that neceſſity, though that which gave occaſion to it, ſhould be allowed and admitted to be Illegall, a Controverſy with which I have nothing to do, & which I do not pretend to underſtand; but as for that part of the Commiſſion which concern'd the Hoſpital, it was in Vertue of a Power, which was always veſted in the King, and which he might always delegate to whom he pleaſed, ſo that all the Acts they did in this affair, were unqueſtionably valid and Lawfull in themſelves, and cannot be cancell'd or evacuated by any leſs Authority, without a reaſon of Equity, or an Emergent reaſon of neceſſity aſſign'd. Suppoſe the King and Queen ſhould graciouſly commit to the Mayor, Aldermen, and Commonalty of the City, the care and management of the Tower of *London*, and the diſpoſall of the Places of Conſtable and Lieutenant, and Maſter of the Ordinance &c. they ſhall ſtill be preſumed notwithſtanding this, to reſerve a Power of Viſitation to themſelves, it is reſerved in the nature of the truſt, though it were not expreſsly and poſitively provided for, and ſo it is here, the Kings Charity is as much and as naturally in his own diſpoſall whenever he pleaſeth to concern himſelf about it, as his Arſenalls or Magazins, and, indeed the difference between theſe two is no more, then that by the one the King provides for the Safety and defence of his Subjects, and by the other he relieves the neceſſities of thoſe by an effect of his mercy, whom all his power cannot defend againſt the wants and Infirmities that are and will be always incident to humane Nature, and it is but fit he ſhould be ſatisfy'd, whenever he deſires it, as to the Conduct and management of one of theſe truſts, as well as of the Other. If the King notwithſtanding ſuch Commiſſion, ſhould after Enquiry and Viſitation made, diſplace the reſpective Officers in the Tower, and put others in their ſtead, there is no man living, I believe, in this caſe that will pretend to diſpute his unqueſtionable right in doing it, neither would it be Lawfull to diſplace them without his conſent, though in all other matters, and in all Future Elections when a Vacancy ſhall happen, the Commiſſion ſhould ſtill continue & the powers to act under it remain entire as before, but their Commiſſion cannot extend to things already determin'd by the King, becauſe the Kings authority is the Fountain of their power; and to reverſe his determination without a reaſon of equity or neceſſity, is to diſown that authority under which they act, and by conſequence to diſannull their own, for rivers muſt be dry when the Fountain is deſtroyed.

If a man be Tenant to a Landlord and have a leaſe under him, he performing the Covenants that are ſtipulated between them, he cannot be ejected out of his Farm, or deprived of his Tenant-right, which is a ſort of ſecondary Freehold, ſo that he may renew his leaſe from time to time, and ought to be conſidered *ceteris paribus*, beyond any other pretender, this being a kind of Charter-Office under the Lord of the Fee, but if a man take a Servant without any other condition then that of paying him wages for his ſervice, he may part with him at pleaſure for a good reaſon or for none at all, for the law does

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not tell us who shall be our servants, or oblige us to keep them whether we will or no, which were in some sense to make our Servants our Masters, and to invert the order of Government and of things, but we may keep whom we please; and as long as we please, and dismiss them for an humour as well as for a reason. If therefore we in this Hospitall are Servants to a Master, receiving wages and Salaries for our work, which Master is first of all the King, and Secondly a Corporation entrusted by and under him, there is no question but that the King in whom the first power is lodged, may eject either me or Mr. *Hughes* at his pleasure, and we cannot complain of any legall wrong, neither can we renew any pretentions for the future, under the notion of a legall right, we never having had any other sort of right then what was arbitrary and dependent upon his will; but a Corporation acting under him, though the general trust be actually devolved upon them, yet they cannot displace a particular person whom the King hath chosen, without first representing to his Majesty the reasons of it in order to the obtaining his consent, so long as he is alive. For a deputy & a servant can do no legall act in opposition to the principall from whom the power is derived, but they may and ought to represent their reasons, if they be of consequence to the good of the house, and if he will not hear them, they have discharged their duty, and ought to be content with the honour and satisfaction of having endeavoured to do justice, and of having eased their consciences of the guilt that would have lain upon them, by a willfull neglect of the trust committed to them, and after his decease, as it is in our case, only the Successor can destroy, what the Predecessor hath done out of the fullness and plenitude of his power, it being as impossible for a lesser power to destroy the act of a greater, as it is for a private man by virtue of any private authority and right, which he may assume or fancy to himself, to chuse whether he will obey an act of Parliament that concerns him, till it be dispens'd with by another act, of equall authority in its legislative originall, and of greater in its postliminious application, because it supercedes the obedience to the other, and for any lesser power without a reason given or an application made to the Sovereign then in being, to reverse what the Sovereign by his own rightfull power hath ordained, is for servants to assume that dispensing power to themselves, which they decry so loudly and so desprvedly in their Masters, for there is no right in nature but legall right, and for any that have not authority, to reverse the legal act of a superiour power, must needs be inauthoritative, illegall, and void.

If this argument which I design only to justify my self, and to shew upon what bottom my title to the place of Hospitaller stands, does in its application prove too much, and extend it self to others as well as my self, those Gentlemen that claim and are actually repossessed upon the restitution of the Charter, may thank themselves for solliciting Mr. *Hughes* to come up and renew his crackt and illegall pretentions, and for making this defence, which I would have been very glad to have let alone, to become as necessary with respect to me, as is is just and honest in it self.

If the Right Honourable the Lord Mayor, and the Honourable Court of Aldermen, to whom I pay all that deference and respect which their great quality and Character Justly calls for, shall look upon this as written in derogation to them, and to the power and trust committed to their Honourable Court, I humbly hope, when they have duely considers'd of the matter, they will concurr with me, and that if I should maintain the contrary

position

poſition they would think themſelves concerned out of a principle of Loyalty and duty to eject me out of this houſe, that it is by no means a diminution to their juſt Rights, in thoſe things which the Sovereign hath not determined, to acknowledge his Legall Sovereignty in the which he hath, For the King acted in the Regulation of this Houſe, not by Virtue of any Arbitrary Power, which he unjuſtly aſſumed and arrogated to himſelf, but by ſuch an one, as is inherent in him, by the reſerve in the Charter of the Royal Founder, by Act of Parliament, and by the very Nature and reaſon of the thing, by which he muſt always be ſuppoſed to be inveſted with a Power, to ſee that his own Charities be rightly diſpoſed. The King is the Firſt Viſitor of this *Hoſpital-Maiſon*, this Houſe of *Invalids*, the Lord Mayor and Court of Aldermen are the Second, acting by a Power derivative from him, and therefore it is plain they cannot reſcind an Act of his, which would have been Legall in it ſelf, becauſe all Legall Acts done and paſſed by a Legall Superior Power, cannot be reſcinded without the conſent of the Sovereign, by any Subordinate Authority acting under it, becauſe this were to rob and deprive him of that Supremacy and to aſſert his Prerogative to themſelves; and if that grave and wiſe Aſſembly in this hurry of Affairs have yielded a little too far to the Solicitations and Importunities of Men without a Title, and proceeding upon a falſe & Erroneous Hypotheſis of the Reſtitution of the Charter, which hath no manner of connexion with our Caſe, yet a *Facto ad jus Conſequentia non valet*, the Fact and the right are two things, and the Judgment of that right, in what Perſons it is placed, we humbly conceive with all imaginable ſubmiſſion to the Court of Aldermen, lyes unqueſtionably before the King, whoſe juſt Power in this or any other matter, I hope it will never be a crime to maintain. For as one Act of Parliament cannot be repealed but by the Act of another, ſo the Act of a King in thoſe Affairs wherein he hath a proper cognizance and Legall Power can only be reſcinded by himſelf or his Succeſſor in the Imperial Seat, unleſs they be ſuch Acts as are Limited by time, as in the affair of Patents or Temporary Proclamations or the like; and then at the expiration of that term they die, and are repealed of themſelves; ſo that having been placed in this Station by one King and allowed by another, I truſt his preſent Majeſty ſhall have no occaſion to think any otherwiſe then Favourably concerning me, and I rely upon the Grace and Goodneſs of King *William* and Queen *Mary*, that the Gifts of Gods Vicegerents will ſtill be without repentance, as well as thoſe of the Divinity it ſelf.

That I appeal to the Throne, it is becauſe I ſee the whole affair lying ſo naturally proſtrate at the Footſtool, and that the Judgment of it cannot appertain to any other Court or Judicature whatſoever, till it be remitted from thence, and I ſhall very willingly acquieſce in the Determination of that Power, in whomſoever it is lodged, (is being too little an Imployment for the thoughts of Princes that have ſo vaſt objects to exercile themſelves upon) to whomſoever the Sovereign ſhall pleaſe to referr it, but more eſpecially I repoſe an entire confidence, a Fixt, unſhaken, and I had almoſt ſaid; a demonſtrative aſſurance, in the Favour of that Honourable Court to which the ordinary inſpection and Viſitation of this houſe belongs, being in ſome ſenſe an Orphan of the City, left deſtitute by a good, but an unfortunate Parent, that was undone in part by the Fatall Conflagration, and in part by other accidents incident to Trade. I have a great deal of reaſon to expect from ſuch

a Conſtitution; where the Lord Mayor, next under his Majeſty whom God preſerve, is my Political Father, the Aldermen my Guardians, and the Commons all allyed to me in the Quality of Brethren, I ſay, I have a great deal of reaſon to expect and I do with great aſſurance wait for it, that I ſhall not only have ſtrict Juſtice done me, if my cauſe come to be determin'd at that Barr, but that I ſhall have all the Favour that Equity will afford me, and ſuch an Equity that is mixt with ſomething of affection to a ſhrubb of their own growth, that calls for no raines, no dewes but what are Naturall and Hereditary to it, for water and Refreſhment.

I know no perſon in the Court of Aldermen, whom upon this account at leaſt, I have not reaſon to believe my friend, unleſs it be one Gentleman, Sr *Patiente Ward* I mean, before whom when I preached, when he was Lord Mayor of this City, I had the misfortune to leave him out of my prayer before Sermon, for that it was an involuntary thing, ariſing from an undeſigning negligence, without any ill intention, I call the great God of Heaven and Earth to witneſs, and this is no more then what I have affirmed a thouſand times in the company of my friends, when I had no intereſt to perſwade me not to own it, if the affront that was ſuſpected, had been reall on my part, and it is further obſervable that I did not only omit him, but the Aldermen, Sheriffs, and Commonalty too, who are all of them prayed for upon theſe occaſions; now there is no man in his wits but muſt ſuppoſe me to have been quite out of them, if I had deſign'd a Publick affront to ſo Venerable an Aſſembly, ſo Illuſtrious a Bench, ſo great and populous a City, in which I had not only received my Nativity, and a great part of my Education, but in which I had at that time among all ranks, ſo many favourers, Godſpeeders and friends, and if after this any ſuſpicion can remain upon the mind of that Gentleman, that it was deſignedly done, which to me it ſeems impoſſible that it ſhould, then I humbly intreat him if no other conſideration will prevail with him, to let the memory and old friendſhip of my deceaſed *Father*, intercede with him for my forgiveneſs.

But if it be as I have repreſented, that the true and only legall deciſion of the controverſy between Mr. *Hughes* and me lies ſolely and entirely in the Kings breaſt, unleſs he ſhall pleaſe to put it into ſome other hands; Mr. *Hughes* knows who it is that preached a famous Sermon at *Abingdon* Aſſizes upon a moſt infamous ſubject, the juſtification of the worſt of parricides, of the Execrable Murther of that glorious *Martyr*, who fell a Sacrifice to the Church of *England* and the *Proteſtant* Religion. He juſtifyed and gloried in that horrid Fact when many of the pretended Judges themſelves had repented, he Crucify'd the Royall Saint afreſh and put him to an open ſhame before a numerous aſſembly, and in the face of juſtice it ſelf, when others were waſhing off that bloud with their tears, and would have been glad with the expence of their own lives to have retrieved the ineſtimable loſs of his, which brought ſo black a guilt, and was followed by ſo miſerable uſurpation and confuſion. Now what favour can Mr. *Hughes* expect from the Royall Grandſon of that Martyred Prince, when the principles of that Sermon are levell'd at himſelf and at all Succeeding Princes whatſoever, when Mr *Hughes* and his Partizans are angry: though there be no good Subject but hath ever maintain'd that the Perſons of Princes are unqueſtionably ſacred, notwithſtanding the reall and groſs exerciſe of Arbitrary Power, whatever becomes of

their

Politicall capacity and Regall administration. Mr *Hughes* may think it pleasant to wash his impure hands in Royall bloud, but that was not that washing which the Prophet *David* required in all that minister in the holy things. *I will wash my hands in Innocence*, said he, *and so will I go to thine Altar*. It is true the act of oblivion pardons this crime, but to pardon and to forget are two things, to pardon and to reward are two more: if *Salmasius* would have accepted of so small a pittance, as the place of Hospitaller of *St. Thomas Southwark*, he would have become the place and title very well. because it was very suitable for him, to eat the Kings bread who had defended his cause, but *Milton* would certainly have been an awkward man in that station, and what is Mr. *Hughes* I pray better then he? unless, it be that Mr. *Milton* understood reason, argument and wit, if he would but have employed those talents to better purpose, which Mr. *Hughes* does not; but that Mr. *Hughes* is more malicious, black and *Saturnine* in his Sermon, then Mr. *Milton* in his book, and that the one is more dull and Phlegmatique then the other. *John Goodwin* a man of much more honesty and sense then Mr. *H.* being so far carried away by the Republican bigotry of those unhappy times, which overflowed and bore-down Loyality with a rapid and resistless torrent, was content with his pardon and leave of retirement into a private corner, without perking up impudently for preferments and rewards, when he had so justly forfieted his life; and the same was Mr. *Milton's* case, who endeavoured to make some sort of attonement for his crime in the English History which he after Publish'd, by offering up a devout sacrifice of praise and admiration to the memory of that excellent and incomparable King, and giving him that great and lofty Character which he deserved: but what hath Mr. *H.* ever done to make amends for his fault? what instance can he produce of his sorrow & repentance? And yet so foul a crime so publiquely committed, a preaching and a printed crime, can never be said to be truly repented of without a preaching and printed satisfaction, for otherwise though there may be some inward compunction & remorse, yet the satisfaction & the injury are to hold some sort of proportion with each other, and to do a publique, a notorious crime, without a repentance and satisfaction equall to it, does not come up to the nature of true repentance, but it is like robbing our Brother of a Pound and paying him a Penny by way of Restitution, which is but to continue in the Robbery still, and rather to own and justify the fact, then to condemn and disapprove it.

Mr. *H.* can farther inform us if he pleaseth, who it was that vext and persecuted his neighbour for teaching a School without a licence, and yet had no license for himself at the same time, but answer'd to the name of *Thomas* instead of *William* to save his Bacon at a Visitation, and he can tell us further of the self-same person, how he stood engaged by promise for the payment of a sum of money, and yet refused it after seaven years time, under the protection of the statute of limitation. and many other things Mr. *H.* can tell of that man, when he hath a mind to furnish a *Biographer* with materials for the life of so matchless a worthy, and if this man should happen to be the same with the t'other, I doubt me he hath not yet repented of his Treason, for this is treason too; it is treason against humane Society, which such principles and such practices would certainly destroy, and this is the very foundation of Treason against Princes, whose Persons are so Sacred above all other men, not so much upon their own private account, as for the sake of

the publique, which is highly concern'd & interested in their safety, and suffers in all the injuries they receive, and thus much may suffice for the Character of *Hugonides* and his Freind, whom I would not have treated at so rough a rate, but that they have turn'd raillery into a pertinent thing, and made it so absolutely necessary for me to expose them, that it may appear at least there is no merit of congruity betwixt my small preferment and them.

What hath been said hitherto, hath been upon occasion of the Stating of the Case, as it was represented to Three worthy Gentlemen, learned in the Law, in order to obtaining their Opinions upon it, I come now very briefly to say something with relation to the Opinions themselves, by all which it is agreed that the ordinary Power of Visitation and inspection into the affairs and Officers of this House is in the Governors for the time being, that is to say, First in the Lord Mayor and Court of Aldermen, and Secondly those other Gentlemen and Citizens that are deputed by them or allowed by their permission to manage and Transact the Hospitall Affairs, and that the respective Officers belonging to it, are not Charter Officers that have a fixt Interest and a setled right, but only Servants at pleasure receiving wages for their work, and to be dismist at discretion, when the Governors think fit, though behaving themselves well in their severall Employments, they may be said to have an Equitable right, and that it would be an Hardship in the Governors, which they could not justify to themselves, to turn them off against their wills in such Circumstances as these, but however these Opinions do at least say thus much for us, that the Persons claiming against us have no Legall right, and that there is no necessary Connexion betwixt the Regulation of the Hospitall and the Restitution of the Charter, so that Mr *Hughes* is very much out of the way, when he insists so unskillfully upon a Legall right, and proves himself to be as bad a Lawyer, as he is a Divine or a man.

But yet I confess there is one thing in the opinion of that great and Excellent Person Mr *Sergeant Pemberton*, which I cannot perfectly assent to, though I should not presume to own a difference in matters of this nature from a Person so profoundly Learned in his Profession, but that the Success of our cause does in some measure depend upon it, he is pleased to say that upon the Restitution of the Charter, and the avoidance of that Commission that supply'd its place, there were no Governors left either old, or new, but that it was perfectly at the discretion of the Court of Aldermen to regulate and order all those matters as they pleased; but in an humble Opposition to this, I presume to offer, that the King being at all times vested with a Power of Visiting the Hospitalls and of making from time to time such Regulations in them as to his Princely Wisdom shall seem most meet and Expedient, though the Commission be dissolved, yet the Regall Power and Authority still remains, and what a King hath done by vertue of his Legall, and rightfull Power, always inherent and vested in his Person, that nothing less then a King can destroy, so that those new Governors being a Constitutive and Essentiall part of this very Regulation, they must stand Independent from the Court of Aldermen, till the King declare them to have nothing to do in this House, and the old ones that were Ejected, whether Officers or Governors cannot be readmitted without the Kings consent, the Kings Authority and the Validity of it in all those Acts to which it extends it self, being always the same, though indifferent Persons that are invested with it, so that in all the Legall Jurisdictions of a King, it is *ille aperit & nemo claudit*, he openeth and no man shuts, he shuts

and

and no man opens, nothing but a King can dissolve those Obligations or annull those Rights which a Lawfull King hath Establisht. And indeed it were a great incongruity in the King, very unbecoming either his wisdom or greatnes, and a great diminution to his power, if he should erect and constitute a Commission to regulate abuses, in such things as do naturally and legally belong to his visitation and inspection, and yet when the Commission was dissolved, the regulation should cease, which would be to as little purpose, as if no such regulation had ever been made, only it would reflect a disparagement upon the King as weak and inconsiderable, and pretending to more power then really he had; for that regulation which is actually dissolved, after the dissolution of that Commission by which it was made, must needs have been unjust and unlawfull before it, for lawfull and just things will endure. Nay, I appeal to all the world, what confusion it would introduce into the affairs of the City, if all the acts of the Commissioners for the space of five years together, should by the expiration or dissolution of the Commission be rendered null and void, though yet upon supposition that the Charter could not be voided, which I do not concern my self whether it could or no, the Commission was so far illegall, if we look down to it's root, though its necessity may perhaps plead something in its excuse, as I have hinted before; but as for that branch of the Commission which concerned the Hospitalls, it was as I have shewn, strictly legall, and therefore all those acts which pass'd under and from it, of which the election of Governours and Officers were two, must need be legall and consequently valid. No Mr. *Hughes*, do not please and flatter your little self with vain imaginations, the regulation is as valid, as the first authority from whence it sprang, and that is the Kings, though the Commission that managed and ordered that whole matter be now actually dissolved, and I think I have given so very good reason for it that even your own impudence, that face of yours which is your unquestionable Property, and is peculiar to your self, cannot without some small discolouring, some streaks and Essays towards the Modesty of a blush, oppose it any longer.

But yet I grant, that though the Governors do manifestly hold by a Superior Tenure, to any that the Court of Aldermen can give them, yet the Charter being restored, the Ordinary Visitation and Inspection of the Hospitall returns together with it, and the Aldermen in the Course of things and in the Right and Power of Administration being Superior to the Commons of the City, and much more to any among the Governors that are not Free of the City, they may so tye up the hands of the Subordinate Powers, as that they shall have no right to any thing but their Green Staves, and cannot move one step in any Emergent business of the House without the direction of the Court of Aldermen or at least their tacit consent, so that I confess the Aldermen have Fully retrived the exercise of all their Power, in all Emergencies that shall happen *de futuro*, and in all matters which the King hath not determin'd, and which none but the King can Evacuate or disanull, and have left the others little or nothing, but the Stile and Title of Governors, of which I conceive they cannot be divested without the Kings express, or at least implicit concurrence by referring the whole matter to the Honourable Bench, but for us that are Officers, it is a little otherwise, it is true we are at his Majesties disposal, as well as the others, but only that during his Majesties pleasure, we know our respective Places and our Stations, and are obliged to act in our

respective

reſpective Spheres; otherwiſe the buſineſs of the houſe muſt be at a ſtand, and by conſequence the Royall Charity be diſappointed, and this is true likewiſe as to our Maſters themſelves, as to ſome particular Acts, that is, of taking in the Sick, and diſmiſſing the Sound or the Incurable and auditing the Accounts, but only they can make no new order as a Court, without the Expreſs or at leaſt the tacit and implicit conſent of the Court of Aldermen. It is no derogation to that great and wiſe Court to ſay that the King is their Superior, not only in Generall in his Tranſcendent Dignity and Power, but more particularly in all thoſe matters which belong naturally and Legally to his inſpection and care, though by the Charter of his Royall Predeceſſor, the ordinary adminiſtration of that very Province be committed to them. For this I am ſure there is none of them but will very readily grant and Zealouſly aſſert, that the King is their unqueſtionable Superior in all Lawfull matters, and that the King of *England* never dyes, but is always the ſame, & we do very willingly acknowledge that by the Reſtitution of the Charter, their old Authority returns together with it, only that that Authority hath now a Partiall and a Temporary reſtraint upon it, by the King, (who is the Fountain of that Power by which they Act,) his having already determin'd the Rights and Stations of ſome particular perſons, and we ſay we are legally poſſeſſed of our reſpective places, till we are legally ejected, that is, till it be done by an equall authority to that which put us in, or till the King pleaſe to determine otherwiſe concerning us, either expreſſely or by returning back to the Court of Aldermen the entire ordinary power of viſitation, which it doth not appear to me that he hath yet done, in things that by the Royall authority have been already determined and ought to ſtand firm till they be annull'd by the ſame: and I do not ſpeak this, neither would I be ſo underſtood, as if I were afraid of the Judgment of that Honourable Court, for I know their Juſtice, their Goodneſs, their Integrity and Candour, and am not afraid to throw my ſelf upon it, but I have ſaid this for no other reaſon, but that in my apprehenſion, upon the beſt and moſt impartiall judgment I can make of things, it is the true ſtate of the Caſe, and I hope his Majeſty will not be offended with me for having thus largely vindicated his Royall rights, though in an inſtance of greater conſequence to us his poor Suppliants and Servants then himſelf, and I entreat the Right-Honourable the Lord Mayor and the Honourable Court of Aldermen to conſider, that it is not we that encroach upon their rights or pretend to diſpute their lawfull jurisdiction, but it is they who upon grounds which they cannot juſtify, would ſupplant us, for they pretend a legall Claim upon the reſtitution of the Charter, which is to diſown the ordinary Jurisdiction and to put themſelves out of the diſcretion of the Court, upon a bottom of legall property, which they have not, whereas we do not diſown it upon any other account, then only upon an Emergent point of Law, particular to the circumſtances we are in, in which the Kings honour and prerogative are concerned.

It remains now only that I conſider as clearly as I can, the circumſtances peculiar betwixt Mr. *Hughes* and me, as to the right or equity of our Caſe, and I think in generall it is already proved, ſuppoſing Mr. *Hughes* to have had a legall choice, when he firſt made his entrance upon this little preferment, yet that he was legally Ejected, that is, Ejected by virtue of that Authority-Royall, which hath reſerved to it ſelf, in the very Charter and Conſtitution it ſelf, (beſides other reaſons that do naturally ſuppoſe and juſtify ſuch a

reſervation

of visiting and inspecting the affairs of this house, with a *non obstante* to all former orders of any inferiour and delegated power concerning them, and if these two authorities may mutually reverse what either of them hath at any time ordained, then Superiority and Subjection does manifestly loose their nature; and there is nothing but disorder and confusion succeeding in their stead, for no Government can stand in any place whatsoever, where there are two contrary Authorities dissolving one another, and rescinding each others Constitutions and Decrees. *Mr. Hughes* being therefore ejected by the King, and I by the same Authority put into his place, does in vain insist upon the Illegality of my choice, or upon the Firmness and validity of his own, unless he can shew an Authority Superiour to that by which he was ejected and I chosen, which was done, as he knows very well, by the Supreme Ordinary and Visitor of this house, or unless he can give a reason why a Master of an house may not act with his servants after an arbitrary and unaccountable manner, so far as the retaining them in his house & service, or the dimissing of them from it is concerned, and since he cannot say any thing to the diminution of one King, especially in a matter of inconteſtable right, which does not equally strike at the unquestionable right and prerogative of another, he will do well to tread gingerly upon so tender a point, and to speak very softly concerning it, and yet when he hath done and said the most he can, the Hospitall though they may possibly pretend to be exempt from Episcopall Jurisdiction, and if they had not pretended to thus much at least, Mr. *Hughes* had never come thither, yet they will never I hope, be exempted from the Kings, and will not only remain to be a reall, though lame and imperfect part of his Dominions, but also the object of his peculiar care, who is in generall the Father of his Countrey, but more especially the refuge of the Infirm and Weak.

Mr *Rustat* whose Exemplary bounty and Munificence founded those Scholarships that are called by his name in the Florishing Society of *Jesus* Colledge in *Cambridge*, reserved to himself during his own life time, the Approbation of such as should be chosen into them, and it would have been very hard to deny him, though he had not claimed it, a Prerogative so naturall and so just as this, much more would this have been ungratefull and disloyall in Subjects to their King, during the whole Reign of *Edward* the *6th*, after the Foundation and Endowment of this House, to deny him a right of Enquiring from one time to another into the management of so great a trust, though no reservation in his Charter had been made, which reservation must for that reason more especially respect his Successors then himself, who had an undoubted and unquestionable right of Inspecting and inquiring into that Royall Charity which was so strictly and so immediately his own; it was I say, a reservation to his Successors rather then to him, which gives them a right of Law, (besides a right of Congruity which they will always have in the Donations of their Predecessors, to see that their Piety and Charity be not abused) to examine or inquire into the management of this Trust, and to confirm or alter, what is already Established by a Subordinate Power, as to their Princely Wisdom shall seem meet, and when Mr *Hughes* or any of his Friends, can clear themselves handsomely of this one consideration, which stabs his whole claim, and goes to the heart of his cause, then I will yield to him without any more ado, though I have several other material things to suggest in bar to his pretences, which are so unsound and rotten in every Point and Circumstance, that no man ever appeared to lay his claim to any

thing with greater disadvantage then Mr *Hughes* hath done.

For first it is notorious that when he was first admitted into this place and for about three years after he never was Episcopally ordained, as the Constitutions of the Church of *England*, and the severall Acts of Uniformity, but more especially that which is called the *Bartholomew* Act, do unavoidably require, nothing of that Act being ever yet repealed that I know of, unless it be that Clause which concerned the Solemn League and Covenant, which was intended to be only a Temporary thing and was to expire of it self after a certain term of years, which is now long since Elapsed. He says he was chosen into this House by Fourscore Governors, and to do him a kindness it shall be if he pleaseth, four thousand, For let them be never so many, it was in it self a void Act, For they could not chuse a Non-Conformist to be Chaplain here, to eat at the Kings cost in the Kings House, who is the Protector and Guardian of the Laws, and to be maintain'd by way of Salary under the Notion of an Ecclesiasticall Person out of the Publick Revenues of the State, as if Non-Conformity were to be encouraged out of the Publick Revenue, at the same time when it was so severely and expressly forbidden by the Statute Laws of the Kingdom, several times reiterated and repeated.

I do not speak this out of any want of Tenderness to a Religious dissent, For God Forbid but every man should Act according to his Conscience, neither did I ever oppose any dissenting Party, so as to think them in Justice punishable for their dissent, out of any other Principle then what was meerly Political, for the Preservation of the Publick Peace, which is the certain and undoubted measure upon which the Acts of Parliament in that behalf have proceeded, and if I have any where said any thing with heat or with contempt of Separatists and Dissenters, out of too much precipitance in writing, or out of the rashness and inadvertency which is incident to Youth, yet it was always my Principle, that all Mankind by nature are Endowed with all that Liberty of Action, of Opinion and Enjoyment, which is consistent with private peace and rest, or with the Safety and Tranquillity of the Publique, which in a Society or body Politique is that which is most especially to be regarded, and that the Legall restraints are only Artificial things superinduced by necessity, experience and length of time, to promote the advantage of a Nation, by making provision for its Peace, Ornament, Plenty and Protection, or to prevent its ruine by restraining and curbing those interferring passions that have a Naturall Tendency to so bad an End: No man can complain of me that ever I Persecuted him for his Conscience sake, but some that have been actually under the Hatches of the Law, I have endeavoured to relieve and bring off as well as I could, as the Persons, if they be living, whose names I have now forgot, may remember; I never pronounced an Excommunication in my life, and am naturally very tender in a matter of such dreadfull consequence as that is, but an Absolution from it, I have with great Chearfullness and Alacrity recited; there is nothing in the whole world that hath afforded me greater trouble and dissatisfaction of mind, then to see the Frailty, Folly, and perverseness of humane nature to be such, that we must needs be Falling out and Squabbling about opinions, which may be United in Charity, though never so opposite or distant in themselves, and which are by no means incompetible or inconsistent with our common happiness and Salvation; but yet I have always been and I am still in my own thoughts a professt Enemy to an unlimited Toleration, though the Naturall tenderness and compassion of my

temper,

Temper, to which even Justice hath a Cruell and Frightfull appearance, will never suffer me to vex my Neighbour upon a Religious account; my reason why I am against it, is, because long experience hath Taught and inculcated a Lamentable truth, that men will always be Embroiling the Peace of their Country upon Religious pretences, that there is a mixture of passion, a leaven of design, a secret root of Ambition or Revenge, that frequently lies hid under a sanctify'd appearance, and that it is not so much Salvation in the other World or truth in this, as power that is aimed at and contended for; and if these inconveniences could any way be prevented without the rigours and severities of humane Laws, I for my part should think it the blackest Tyranny in the World, that the Liberty of thought and of opinion, or the freedom of a pleasant and diverting Conversation (that ought in reason to be the result of such differences as these, by mens comparing their Sentiments together) which are the first, most Naturall, most Essentiall and deeply rooted Liberties of mankind, so long as they keep within the bounds of modesty and Friendship, should be Fettered and Entangled by positive Constitutions, which is the true Spirit and Mystery of the Papacy it self, and is the greatest enemy that can be to that curious & inquisitive temper, that Philosophicall Genius, that soaring & searching disposition of our minds, in which the true perfection & dignity of humane nature consists, and if any expedient of comprehension can be found, that shall upon experiment prove successfull to the reconciling those Feuds and Animosities which we labour under, by making the passage into our Church so much more wide and spatious then it was before, that weak, but conscientious men may enter in without the danger of being Crowded or hurt, if any way can be contrived that Liberty may be granted without injury to the Publique, even to those who will still separate after the largest Concessions, there is no person living that would more sincerely rejoyce, to see that punishment was rendered an useless and unnecessary thing, by Charities being substituted in the place of Justice, and all those breaches made up by a Practicall agreement, which it is impracticable and impossible ever to reconcile, by a concord of thought, or a Sympathetique harmony of opinion, but this though I could wish to see with all my heart, yet I must needs say I never can expect it, and therefore all that can be reasonably done in such a case, is to make the Termes of Communion so large, which I am glad to see doing by the Wisdom and Prudence of this present Parliament, as that great numbers of Honest and good men, who cannot get rid of their prejudices and mistakes may be added to the Church, taking care all the while, which I doubt not but such a wise Assembly will effectually do, that we do not pull down the Church under pretence of Enlarging it, for a Vineyard is always supposed to have its Fences, and a Church that has no Walls or Hedges to defend it is so far from being a Christian Society, that it is indeed no Society at all, and is rather to be called a common Field then a *Catholique* Church or a Garden full of Spices which the Lord hath blessed.

It is not therefore Mr. *Hughes* his dissent from the Established worship, when he took upon him first to be Chaplain of this place, that I reprove or find fault with, but that he only washed the outside of the Cup and Platter, and was like those Tomb-Stones which our Saviour speaks of, which notwithstanding they had an outward comelyness and Beauty in the sight of those that past by, yet within they were full of rottenness and dead mens bones, for what else but such a False and Pharisaicall disposition as this should

make

make him less afraid of Sacrilege then of a Surplice? Of Robbery then of Common-Prayer? Of Prostrating and Prostituting his very Soul and Conscience to the Unrighteous *Mammon*, then of bowing to the Name, and by that gesture adoring the Divinity of the Holy *Jesus*? and what was it less then this for him to take the King's Money for disobeying his Laws, and to receive the rewards of the State, which are pay'd and distributed out of the Publique Revenue, for those very Actions or rather Omissions of his to which the Law had allotted nothing but Fines and Imprisonments and such like grievous things? Mr. *Hughes* knows very well that his Salary could not be Legally paid to him as Chaplain or *Hospitaller* of this House, upon any other supposition then that of his Conformity to the Establisht Church, and to the Laws of the Land, of which the King is the Guardian and Protector, and whatever his Friends might give him as a dissenting Preacher, which I should never envy him, though it were never so much, Yet for him unjustly to rob the Church of its Patrimony, and to appropiate to himself, what the Law never designed for a Person so unqualified to receive it, as he then was, how little does it differ in its nature from picking of Pockets? Or padding upon *Clapham* Common, or between that and *London*? though the Governors would have given it him, unless it were out of their own proper pockets, not out of the Stated and Publique Revenue of the House, yet Mr. *Hughes* ought not in Conscience to have received it, it was in him a point of Knavery to receive, in them a breach of Trust to give, he dispensed with his Conscience and they dispensed with theirs, and with the Laws to boot, which it seems it is the clear Prerogative of Subjects to do, though at the same time we justly take it ill, that our Princes should not Govern themselves and us according to them, or rather it is the peculiar Priviledge of some sort of men with a *non obstante* to the rest of mankind. Those Fourscore Governors he talks of, that Voted him hither, who they were I know not; neither shall I even give my self the Trouble to enquire, but this I am very sure of, that this was so great, so Criminall a breach of Trust, the greater for being committed under the formality of a pretended Authority and Power, that from that time forward they have forfeited their Title and ought to have broken their Green Staves, as my Lord High Steward doth his white one after the Tryall of a Peer is over, and never to have prerended to the ordering or Government of this Hospitall any longer, for they were not sent hither to break the Laws of the Land and of the house together, but to observe them both and to see that others in their Stations do the same. At least, thus much, I suppose, will be granted by all impartiall Men, that as Governors they had no such Power, as that which they then assumed and arrogated to themselves, so that they not being qualify'd to chuse Mr. *Hughes*, nor Mr *Hughes* to be chosen by them, it was a void Act on both sides, and where then, I beseech you, is Mr *Hughes* his Title? What becomes of his claim, and his fine shows? When without *Quo Warranto*'s, Forfeitures of Charters and Commissions from above, the law in its own proper Channell ran so strong against him, that he was Legally ejected at the very instant when he was so Illegally chosen.

Mr *Hughes*, I presume, remembers what his answer was, when I put the question to him, whether at his admission into this house, he were in Orders or not? his Answer was affirmative and positive that he was; well plaid old *Hugo*, thought I to my self, but Sir, said I, what Orders do you mean? were you Episcopally Ordained at that time? this question did not please him, and

after

after ſome rumbling within, as if he were troubled with winde, occaſion'd, as I ſuppoſe, by a conteſt betwixt Intereſt and truth, the man made a ſhift after a very wry face, which I have no words to deſcribe, to make a very lame anſwer every whit as much diſtorted and awry as that; why truly ſaid he, I do not well remember what date my Orders do bear, which was but the ſecond part of Shuffling and Cutting; the Firſt anſwer was an Equivocation, the Second no Anſwer at all, for he knew very well that they did not bear date, till very long after his admiſſion into this place: the firſt was thought a figure peculiar to the *Jeſuits*, but now it ſeems the Schoolmaſters have got it too, God grant they do not teach it their boys, the Second beſides, that it was a very ſhameleſs evaſion in it ſelf, was a very mean affront and indignity put upon me, as if I were ſo ſilly to ſwallow ſuch weak anſwers for ſolid and Subſtantiall things. Heaven help the good Gentleman and inſtruct him better by a ray of light from thence, for his noddle is as ſhallow as the *Rokin* is high, as cold and as numb'd as the grey head of *Brecknock*, where the ſnow is a perpetuall Incumbent all the year, even when the Sun returning brings his *Quo Warranto* againſt the Winters Charter, or if two Learned Mountains pleaſe him better, becauſe he pretends to ſomething of that ſame, let it be *Rhodope* and *Hæmus* if he will, for the Top of *Parnaſſus* he hath nothing to do with, although he be a *Pædagogue*, and to that of *Olympus* I am ſure he will never come, unleſs he mends his manners.

I know Mr *Hughes* urgeth in his own defence, he did it to me in a ſhort Conference which we had together, that though it is true he were incapable by Law to execute any Miniſteriall Office in this place when firſt he came to it, and for a great while after, yet at laſt he leapt into a Caſſock and a Girdle, the knot of which was a great deal Lower then it ſhould be, and that his peaceable Enjoyment to be computed from that time to the time of his Ejectment, was to be interpreted as a new choice, and is to looked upon as a tacit conſent in the Governors who made no objections, but ſuffer'd him to go on ſilently and ſmoothly in the execution of his Charge, and I am content upon one condition that this Argument ſhall paſs Muſter in his behalf, and that is, that he refund to the uſe of the Poor of this Houſe, or to the Ornament of that Chappell which he had converted into an Illegall Conventicle, all that ill gotten money, amounting in all to about 200 pounds, of which he robb'd the King, Cheated the Hoſpitall and bereft the Church, by withholding it from ſome other Perſon more capable and more deſerving, which is no more then what, I think, he is bound in ſtrict Conſcience to do, he being the firſt man I believe to be met with in Hiſtory that ever received a Publick and Stated Penſion for a Publick and continued act of Diſobedience and Contempt to the Laws of his Country, a Penſion from the King, in the Kings own Houſe, who is the Guardian and Executor of the Laws he broke. But yet ſuppoſing the connivence and ſufferance he ſpeaks of, to have ſignify'd as much as a choice, or Approbation, yet he was Legally ejected notwithſtanding this, by a Legall Authority abundantly Paramount to that Illegall and Arbitrary little Power by which he was firſt introduced into his Place, it was done by the King the Supreme Viſitor and Ordinary of this Houſe, whoſe hired Servants we all are, and may be Ejected at his pleaſure without any wrong or injuſtice, when ever he is weary of our Service, or is diſpoſed to take other Servants in our ſtead.

But I fancy I know Mr. *Hughes* his Temper ſo well that he will never conſent

ſent to this coſtly Propoſition, or part with ſuch a ſum of money to appeaſe a Conſcience, which is by no means ſqueamiſh, and that he would rather have ſtaid at home quietly in the Country, then have taken ſuch a troubleſome & expenſive Journey to meet with ſuch an irkſome demand, if it had been made by thoſe that have Power to exact its performance; For it is plain he received this money in the Hoſpitall's wrong and that in ſtrict Juſtice he is bound to Reſtitution. Wherefore ſince Mr *H.* will not part with his Coin, he muſt not take it ill if we ſtick cloſe to our Argument and to him, by diſallowing and Proteſting againſt his tacit conſent, for 'tis plain this Notion of a tacit conſent involves the Court of Aldermen and the King and all the Superiors, as much as it did thoſe honeſt and worthy Truſtees, who broke their Truſt when they choſe him; For they did therefore only not oppoſe this choice, becauſe they knew nothing of it, they had no notice or Cognizance of the matter, and it is as plain that neither the Court of Aldermen, nor the King would at that time have ſuffered it, had a due and particular Repreſentation of the matter been made; not the Court of Aldermen, who were all of them Members and Communicants of the Church of *England*, and much leſs the King who would never have conſented that the Panegyriſt of Traytors, and the vile aſſertor of his Fathers Parricide, ſhould eat of his bread and live upon the fruits of his bounty; and if this did ſtill lie heavy againſt him even after his Admiſſion into Holy Orders, then the King who was the Firſt Viſitor and Inſpector of our Affairs, can never be ſuppoſed in any reaſonable Conſtruction to have given his Tacit conſent; for that in all this affair tho' we ſhould admit a tacit conſent of the Subordinate Powers, yet the Court of Aldermen and the King not concurring, it was a conſent of Deputies againſt their Principalls which is a void thing in it ſelf, and is as much as no conſent, a conſent to that which they were obliged by their truſt & by their duty to their Principalls to diſallow. I ſhall not here trouble my ſelf to compute how many infractions M. *Hughes* made upon the known Laws of the Land, every minute was a repeated breach For after three years that he was poſſeſt of this place, it is enough that after his Conformity to the Church, he was Guilty of very groſs and Scandalous neglects of his duty, of which I ſhall ſay more hereafter, and this is Sufficient to deſtroy his Notion of a Tacit conſent, for nothing ought to be tacitly conſented to, that cannot be explicitly and fairly defended.

Mr. *H.* his not being in Orders for ſo long a time, his having abuſed the charity of the houſe, publickly affronted and mock'd the laws of the Land, cheated the King and interverted the publique Revenue to an illegall uſe, was reaſon enough to juſtify his expulſion from hence, notwithſtanding his half conformity, for about a year or two before he left it, and if the King as a maſter had not had a legall arbitrary power to turn away his Servant, as every maſter hath, even without a fault, yet I hope it was a ſufficient reaſon for a Son to proceed upon, that he had juſtify'd the Murther of his Father, and it was ſtill a further aggravation that in his proper buſineſs, as a Chaplain to the houſe, after his pretended converſion to the Church of *England*, he was ſo groſſely neglectfull in the duties of his office, ſo that if ever Servant was legally turn'd away, it muſt be confeſt Mr. *H.* had law of his ſide when he was diſmiſt from his employment, but hath no Claime, no Shadow, no Colour, no imaginable appearance or pretence of right, for a reinveſtiture into his lapſed charge, forfieted by Sins of omiſſion and of commiſſion too, and forfieted for ſuch reaſons that I had almoſt ſaid, it would be a ſin and a crime

even

even in the supreme power it self, which alone can legally do it to restore him, but by any inferiour Authority it cannot be done, barring the Illegalities and irregularity of the proceeding, without affront to the memory of two blessed Kings, as well as injury to the affairs of the house, for let him talk what he will, he will still be as negligent as he was before, he will neither bury the Dead, nor visit the Sick, not read prayers to the Poor, all which were so strangely neglected and omitted by him, that it is known he liv'd at *Clapham* all the week round, and his friend Mr's *Knight* resided here in his place, and was of the two more properly to be stiled the Hospitaller of St. *Thomas Southwark*, she managed all things in his absence, as she easily might, because there was nothing to do, unless now and then a dead Corpse to be put into the hole, to prevent stanch and Annoyance to the living, which it seems was the Sexton's business and not his, for the space of four year together, till toward the very Fag end of his time; and then by the clamours of many but especially of Mr *Molins*, who was then one of the *Surgeons* in the house, he was at last prevail'd upon to take some very little care that two or three bodies should have Christian buriall according to the usage of the Church of *England*, whereas before the Sexton was the Curat, and all the Service at the Grave was, *Let the dead bury the dead for William Hughes.*

Can it be Prudent or Rational to trust such a Man again, who hath been once discarded among other things for so foul and Criminall a Omission of his duty? or do we think in earnest that Mr. *W. H.* is any other sort of Convert then Hypocrites and Apostates usually are, who have no Principle but interest and fear, for by his behaviour after his Conversion to the very instant of his being turned out of his place, by his almost totall neglect, and by his slovenly performance of the Offices of the Church, you may guess what respect he had for them, a Form of Prayer made him puke, he sweat at the Litany, and at the Second Service dy'd away, and he still hates every thing in the Church but its Preferments, and this some of his Friends are so well assured and satisfy'd to be true, tho' it may be not quite so far as I have describ'd, that for this only reason they abett his pretentions, in opposition to every thing that is either Just or Sacred among Men, neither can it indeed be expected that he should be much a friend to positive Constitutions, which must needs ly flat and cold upon his Stomach, who scorns to be Fetter'd by those Eternal restraints the Convictions of truth, the Laws of Essentiall and unalterable reason, the Adamantine tyes and obligations of nature.

For my part double diligence in any Employment, is a thing which I never pretended to in my Life, but without entring into Comparison with him, I can say, that I have faithfully discharged my trust, or else have made Provision that it should be done by others, when either my occasions called me abroad, or my indisposition kept me at home, or my Studies were too importunate to be deny'd my attendance upon them. For the first four years or thereabouts, there were Prayers duely twice a week, upon *Wednesdays* and *Fridays* according to the Canon, and afterwards when this did not satisfy the Governors, I allowed eight Pounds yearly out of my Pocket, to which they were pleased of their goodness to add twelve more for a Competence for a Reader every Morning and Evening. I have visited the sick as there was occasion, and administer'd the Sacrament, when I thought it fit, for in that I must beg leave to be my own carver, and all this five years time and upwards I know not that ever a Sermon was omitted once a week, unless it

were

were once, when I fell ill in the midst of the Prayers and could not go thorough my whole task, and as I have done all the good I am able in the House, as opportunity hath administred occasion for it, so I shall not only still continue to do it as long as I stay there, but as long as I live it shall have my good wishes, and all the small assistances I am able to afford it, even though I be Illegally and arbitrarily dispossest of what I have so long Legally enjoyed.

One particular instance I crave leave here to inlert of my readiness to serve the Hospitall upon any occasion, though it be only an expression of my good will towards it, and at the same time an Intimation of my want of Power, because the design dropt and fell to the Ground. It is now above three years ago, as I remember, that there was a very worthy project under consideration of Re building this decayed and ruinated house, which calls for another Hospitall to receive it self, and is almost as weak, and crazy, as any of the Patients within its Walls, the design went so far that if I am not misinform'd, that Famous Mathematician and Architect Sir *Christopher Wren*, was brought hither to take an Actuall survey of the building intended, which upon so large and spatious a plat of Ground improved by the great *Genius* of that Admirable man would have made a most Noble and Magnificent Structure. A Private contribution from one good man to another, whether among the Governors, or at Court or abroad in the world, was the way proposed to bring this great work to perfection, which I confess I looked upon to be *Magnæ molis*, a thing of great labour and difficulty, like the work it self, and that the Fatigue and Tediousness of such a Collection, (especially when *Chelsey* Colledge and other publique buildings, which I knew of, had Exhausted so much) would give a damp and discouragement to the undertaking, not but that considerable sums might have been advanced this way, but to help the business forward I was for procuring a brief to be read in all Churches and Chappells thorough the Kingdom, the whole Kingdom being more or less obliged to the Charity of this House, and concerned in Gratitude and in prospect of what future occasion there might be of applying to it for the relief of their Sick or wounded, as well as out of a publick Principle of Christianity and good nature, to contribute to so worthy and usefull a design. This I Communicated in discourse to Mr. *Seymour*, who so well approved it, that he immediately imparted it to some others, and I, while the fancy was warm and fresh within me, drew up, as well as I could, the form of a brief, to be corrected and altered by such as understood the methods of such things better than I do, which I have still by me, but after much discourse and many Consultations, for what reason I know not, whether as impracticable or unseasonable at that time, the thing fell asleep and past off *in Fumo* without any effect. I mention this, I say, only to show my good will to the House, and I desire Mr *H.* during his four years Reign and residence at his Court at *Clapham* to give such another instance of his, and I do here again Solemnly protest that no ill usage which I have never deserved, shall ever alienate my affection from this House, but that I will always Remember, upon all occasions, the kindness and support I have received from it, without reflecting upon the wrongs and Injuries that are or have been done me.

So much for Mr. *Hughes* his not being in Orders and for his tacit consent, a sort of consent which God abhorrs and utterly protests against, that ever it should be given to unlawfull things. *These things hast thou done*, saith he, *and I held my Tongue; and thou thoughtest wickedly, that I am even such an one as thy self.*

but

but I will reprove thee and ſet before thee the things that thou haſt done. And I muſt confeſs I do not a little wonder that the preſent Court of Aldermen ſhould ratify that Election with more then a tacit conſent, which that which was then in being, when Mr *H.* his Fourſcore Governours pitcht upon him for the object of their Choice, if they had taken any cognizance or received any particular Information of it, would have condemned and evacuated with the laſt degree of Scorn and Indignation, but Mr. *Hughes* is now a Conformiſt, which he was not then, and I do really attribute this unequall proceeding in a Court of ſo great Juſtice and Honour as that is. to the miſrepreſentations of Mr *H.* and his Freinds, and to their want of ſufficient Information in the matter.

It is next to be conſidered, that when Mr *H.* was Ejected out of this houſe, for the Reaſons that have been already declared, it was not long before he was otherwiſe provided for, with a Freehold inſtead of an Arbitrary dependance, and with a Living of at leaſt Sixſcore Pounds a year, that being the loweſt Computation that ever I heard made of it, inſtead of a Salary of Threeſcore, dependant upon pleaſure, which Living was beſtowed upon him in pity to his Circumſtances, and out of that excels of Charity which is naturall to great minds, in lieu of what he was deprived of here, they believing, becauſe they were not capable of Hypocriſy themſelves, that the pretences of this Whineyard were reall, and that being ſo true a Convert to a Church which he mortally hates, it was a great piece of hardſhip and next kin to Injuſtice, upon him, to diſpoſſeſs him of his place. I know Mr *Hughes* is uſed to ſay, he ſaid it more then once to me and to my Wife, and he hath blown it about among all his Friends, that this Living was not given him in lieu of what he had loſt, but for ſome other reaſons beſt known to himſelf, which he is not pleaſed to diſcover, but yet this he does diſcover by this *Cryptic* Method, which is uſually accounted an argument of Wiſdom, that he believes me at the ſame time a moſt deſpicable fool, and that he himſelf is a moſt Flagitious, abominable Knave, for I love dearly to call things by their right names, and if the laſt of theſe Characters eſpecially be true, he ſhould be no true Member of the Church of *England*, which deteſts and devotes the Principles and practices of ſuch wretched Fellows. For I appeal with great aſſurance to thoſe Reverend and Learned Gentlemen that were concerned in this his new Promotion, whoſe great and Venerable names I will not ſully by inſerting them in a juſt Satyr againſt ſo vile a Caitiff, Firſt, whether they would have ſtickled ſo hard to have this Hypocrite reſtored, if they had deſign'd or intended any other preferment for him, which might have been an equall or a greater ſupport then that was, I can never induce my ſelf to believe this, becauſe it would look with ſo particular, a pointed hatred againſt me, which I no more believe then I do that Mr *H.* is an honeſt man, and with all Imaginable frankneſs, Sincerity and thankfullneſs I ſpeak it, though they thought Mr *H.* to have been a little too hardly dealt with, I know that they are now, and I am very well ſatisfy'd they were then all my Friends, and it ſhall be my conſtant endeavour, with a Proviſo againſt this Simpleton Mr *H.* whom I am reſolved not to ſpare, and whoſe Intereſt againſt mine in this particular Caſe, I am very confident they will no longer eſpouſe, not to undeſerve the Honour of ſuch good opinions.

Secondly, I preſume to appeal to them, and do perfectly throw my ſelf upon their free and open anſwer to the Queſtion, whether they did not really

and purpoſely preferr Mr *H.* or cauſe him to be preferred to his Living in the Country upon this Conſideration and no other, that they thought him hardly treated in being ejected from hence.

But without the rudeneſs of Catechizing my Superiors, the thing ſpeaks ſo plainly for it ſelf, that I might have ſpared thoſe names which nature calls him, and which all men of ſenſe muſt acknowledge to be his due, for to what purpoſe ſhould they give him another Living in Conjunction with this? the whole Salary of this was but Threeſcore pounds a year, and he muſt ſupply one of theſe places by a Curate, to whom when he had allowed an Honeſt Maintenance, what could he get? beſides, that ſomething may well be ſuppoſed to be loſt by Non-Reſidence upon his Country Living, for the Country people are uſually as ſharp as their Parſon, though it were Mr. *Hughes* his own ſelf, and ſomething muſt be pay'd here for rent, had he lived out of the Hoſpitall, as I take it for granted he would never have lived in it, any more then he did before, for I ſee not what inducement there could be to alter his mind, and of what advantage, then could the Hoſpitall have been at the Foot of this Account? or would it not rather have been his Intereſt as well as duty, to have thrown up this, leaving it free for me or any body elſe, and to have retired into his Country Living, there to have ſpent the remainder of his days, as *Nuns* that were no *Nuns* formerly do in a Cloyſter, in Beads and Penances for his *Abingdon* Sermon, and for the Hypocriſy of his pretended Converſion, and all the other ſins of his Life? I ſay, it was his duty no leſs then his intereſt, and thereby hangs a tale, for you muſt know this Mr *H.* among other of his works, writ a very Pious and Elaborate Treatiſe againſt Pluralities, and Non-Reſidence, and he could not hold his Living and his Hoſpitall together without confuting his book. For two Livings I ſuppoſe, will be granted to be a Plurality, and it is a known Maxim in the *Ariſtotelian* Philoſophy, which is like Mr *Hughes* for that, that it is ſometimes in the right, though it be but very ſeldom, that one and the ſame numericall, and Individuall body cannot be preſent in two Places at once, and from thence Non-Reſidence muſt unavoidably have followed. So that Mr. *H.* in this Caſe had no more choice then this, he muſt either have affronted his Conſcience (and what a Conſcience is that that would Proſtitute it ſelf for ſo very ſmall an advantage, as I have computed this would have amounted too) or he muſt have relinquiſht one of his places, or recanted his book and own himſelf to have written or rather bray'd Hereſy before he was aware, like the dull *Animal* that mumbles Thiſtles. I grant indeed that in law theſe two preferments would have made no plurality, becauſe one of them is not in the legall ſtile properly term'd *cura animarum*, but yet there are Souls in one place as well as in the other, and it may be more in this then in his Country Living, ſo that it is a plurality in Conſcience though not in Law, and I challenge him to ſhew me one argument in his Book, that does not fly in his face and call him by thoſe names which I will not give my ſelf the liberty to uſe, being ſenſible I have called him but too ſeverely already, for which I beg his excuſe, as I hope he will think it but juſt and honeſt to beg mine too, for having given me ſo foul a Provocation, by endeavouring to eject me out of what I legally and rightfully enjoy, though he himſelf canget nothing by the bargain, which is infernall quinteſſence, the Devill rectify'd to his higheſt pitch, it is Malice not in words, (as he may perhaps interpret my raillery to be, a poor peice of buſineſs for a man that is robb'd of his right) but in very deed

and

and in truth. I say, he can get nothing but infamy and disgrace among all the Catholique Church of honest men, for none but such do properly belong to the mysticall body of Christ, and if this be the gain he contends for, much good may it do him, and I call it malice, because I cannot call it Revenge, for Revenge is the retaliation of an injury receiv'd, but I never did him any; he deserv'd it's true to be turn'd out of his place, but I knew not the man nor his place neither, I never supplanted him, I scorn such profligate and degenerous acts, I was actually appointed in his stead by the kindness of my friends, before I knew the least Syllable or letter that any such thing was design'd, and if I had not had it, it is undoubtedly certain that some body else must, so that I in particular was so far from doing him any injustice, that my very succeeding him really did him no harm, since it must have been done by some body else, if it had not been done by me, and yet if providence had not just then pointed out that refuge for me to fly to, my affairs were brought to that extremity that I was in danger of immediate ruine, so that he is angry with providence for providing for my safety, as it did afterwards more plentifully for his, he is angry with me for giving my self up to the Guidance and conduct of those happy Starrs that would not see me perish with Hunger and Cold, and he makes it now his business to procure my ruine, though at the same time he knows, he can get nothing by it, but the odious reputation of the worst of men, so that if this be not malice, there is no such thing, and if ever man were excuseable for a sharp invective upon an inveterate, but causeless Enemy, 'tis I.

But saith Mr. *Hughes*, as to the business of Pluralities, it was his own evasion when I urg'd it to him, Sauce for a *Goose* is Sauce for a *Gander*, why may not I be a Pluralist, as well as you? No Mr. *Hughes*, it is not the same case, for I never writ against pluralities, as you have done, and besides you cannot accuse me of non-residence, from whence all your arguments, if you would speak any thing that looks like sense, must of necessity derive their force, and by this you made the Hospital a Plurality though it were but one place: It is not a plurality in law, because neither of the Places is *cum cura animarum* in the legall stile, nor in Conscience, (though I am for Pluralities in a sober sense, if I knew how to come at them) because they are contiguous, and may both very well be sufficiently taken care of, even in the Judgment of those that quarrell most at such things, by the same Person, it is after the Example of St *Bartholomew*'s it self, which is the older Foundation of the two, where both the Hospitall and Parish are United, it is pursuant to the reason and intention of that Act of Parliament, by which small Livings were united and joyn'd together after the Fire of *London*, and there is no doubt but if that fatall Calamity had spread it self so far, as by Gods great Mercy it did not, the same provision upon the same ground would have been made here, and Lastly the Justice and even necessity of it is acknowledged by the Excellent Dr. *Burnet*, now the Right Reverend Lord Bishop Elect of *Saram*, in his Sermon before the *Commons* at the beginning of this present Parliament, where among other things that are managed like himself, with an Air and vigour peculiar to their Author, he piously recommends the encouragement of the Clergy and the encreasing of small Livings for their support; I know not whether Mr. *Hughes* hath read that Sermon or no, but I am sure he dare not read his two other Admirable discourses, from the Pulpit, The *Royall Martyr*, I mean, and the *Dutifull Subject*, for fear of reflecting too severely upon his own

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doubty Performance, to be admired for nothing that I know of, but that it is so refinedly, so admirably wicked, His *Abingdon* Law, his Banqueting house Entertainment, more Cruell then those of *Progne* and *Thyestes* wherein he caress'd himself and entertain'd his Friends (*O scelus! O flagitium!*) with the Mangled and bleeding Father of his Country.

I shall conclude this whole matter with these two things. First, I desire that it may be taken notice, that when upon the death of the Reverend & my late dear friend Mr. *Sowton*, the Parish of St. *Thomas*'s became void, his Majesty King *James* the Second, was pleased upon a Representation of the Equity of my Case to him, the Hospitall alone not affording a sufficient maintenance for a Clergy Man in this Town, to withdraw a Mandate granted in behalf of another in my Favour, and accordingly upon this notice that it was his Majesties pleasure, as I think a plainer Indication of it could not possibly be given, I had an Order from the Commissioners for the Union, that is, in effect I had two Legall Orders for the place of Hospitaller, and one for the Parish, the latter of which two Orders was with his Majesties particular knowledge and Approbation, so that it was his own Act in his own House, and what more Legall choice then this there can be, where the King meddles with nothing but what is Legally in his own disposall, as this matter of the Union manifestly was, I would be glad to be informed. For it is plain that this was not only the Act of the Commissioners, who gave their consent, as indeed they could not well deny it, to what they knew to be the Kings pleasure, but more immediately and expresly of the King himself, who if he did many Arbitrary things, which I neither can nor will defend, though in Gratitude I ought not to upbraid him with them, yet I hope the Legall Acts of a Lawfull and rightfull King, as all men will acknowledge that Prince to have been at that time, ought not to be the less binding and valid, because afterwards, (for this was in the first year of his Reign) he did several things which were Arbitrary and Illegall. If a Mandate be sent down to any Colledge in either University for the admitting of a Master or Fellow who could not Statutably be chosen, supposing he ly under no incapacities by Act of Parliament or by the known Laws of the Realm, this Mandate according to the common Practice of the University takes place without any more ado, unless there be some great exceptions against the Person, or else some other more deserving or more desirable Person be precluded by it, in which Case they usually represent back again to the King, and Endeavour to get it withdrawn, not that they dispute the Kings Power, but that they endeavour to encline his will to a choice more agreeable and pleasing to themselves, or more for the Intereſt and Honour of their Society, in deferrence to which it is very well known that they do sometimes Court a Mandate instead of refusing it, and are glad in such Cases where their local Statutes are a little too hard upon Merit, that the King interposeth his Authority Royall for the Encouragement of Arts and the advancement of Learning, and that in those Colledges that are not of Royall Foundation, & yet by such Mandates a Freehold is convey'd, & the Person invested hath an eqnall right, in at common acceptation, with any other Member whosoever. But whatever exceptions may possibly be offer'd against this practice in the Universities, tho' nothing hath been in repetition more frequent, ever since I knew what the University was, and a great while before, nor any thing in Fact more firm then such investitures by the King's letter, yet no man sure will dispute the Kings Prerogative in his own Foundation,

and

and a Foundation in the Charter, of which there is an expreſs reſervation to himſelf and Succeſſors to inſpect and viſit at all times hereafter, and where the King hath an undoubted and unqueſtionable right of putting in and putting out when he pleaſes, provided they be not unqualify'd by law for their employments which was *Mr. H's* Caſe, when he came firſt to this houſe, who was ſo unqualify'd by law for his place, that even the King himſelf could not diſpenſe with him; in ſuch an houſe as this, I ſuppoſe it will be granted that the Kings Mandate ought to take place, and I had more then a mandate, if more then that can be, becauſe a mandate was recalled for my advantage. I had the concurrence of the King and Commiſſioners, for an Union of the two places, that is, for an actuall poſſeſſion and injoyment of them both, and what firmer title to a thing of this nature there can be I cannot Imagine, and certainly the law would have done very weakly to entruſt the King with the diſpoſall of ſo many and ſo great Spirituall preferments, ſo as to intitle the perſons on whom they are conferred to a Free-hold in the ſame, if at the ſame time he ſhall not be allowed to place a Chaplain in his own houſe, of his own or his Royall Anceſtors Foundation, in the conſtitutions of which he hath expreſsly reſerved a right of inſpection and regulation to himſelf.

The Second thing I hinted at; with which I ſhall ſhut up all, is what I have already pretty largely inſiſted upon, but cannot in this cauſe be too frequently repeated, or too heedfully attended to, and that is, that the diſſolution of the Commiſſion by which this regulation was made, doth not at all affect the regulation it ſelf, ſo as that muſt of neceſſity be diſſolved together with it, for this were to ſuppoſe that an houſe can be no ſooner built, but it muſt tumble and fall down again, as ſoon as the Scaffolds, by the help of which it was erected, are removed, and the Artificers diſperſt and gone away; whereas then indeed it is, and not till then that the houſe appears in it's true Beauty and Strength.

It hath been prov'd ſufficiently already that the King had always a power of viſiting this houſe, even though the City Charter had ſtood, ſo that though the adminiſtration of the City and the viſitation of this houſe were both of them intruſted with the ſame Commiſſioners, yet they were manifeſtly two Commiſſions tack't together that were in themſelves diſtinct from one another, and the King if he had pleas'd, might have put the viſitation of this houſe at that time into other hands, and as ſoon as the regulation had been perfected, he might have diſſolved the Commiſſion, but what a mock regulation had this been? what a Scandall and Contempt would it have brought upon ſuch a regulating deſign as this, if the regulation had been diſſolved together with it? or indeed to what purpoſe would ſuch a regulation have been? and yet if it be not actually diſſolved upon the diſſolution of the Commiſſion it ſelf, then the Governours and Officers muſt ſtand as they were, till they are diſplaced by the ſame or an equall power, becauſe in this it was that the regulation conſiſted.

Queen *Elizabeth* by her Commiſſioners viſited the Univerſities, altered their Statutes and made many great and laſting regulations which remain to this day, notwithſtanding the Commiſſion be not only diſſolved, but the Commiſſioners long ſince dead and mouldered away to duſt in their graves. And ſo in the late Caſe of *Magdalen College*, there is no man of common ſenſe can queſtion but if the Commiſſion had been legall or managed and purſued

after a Legall manner, but the Regulation would have been valid, though the Commiſſion had expired, after the buſineſs, it was intended for, had been done, otherwiſe it would have been a Commiſſion as Ridiculous and abſurd, as it is acknowledged to have been Arbitrary and Illegall.

This is what I have to ſay for my ſelf and my Friends and Fellow-Servants in this houſe, but againſt Mr *Hughes* in particular all things are ſo ſtrong, and run upon him with ſo fierce a Stream, that I ſuſpect the ſoundneſs of his underſtanding for offering to attempt a thing in which he could reaſonably propoſe nothing but infamy and diſgrace to himſelf, he ſeems to me to be got into the predicament of Dr *Rolls*, and that even *Hellebore* and *Anticyra* it ſelf, are unable to reſtore him to his right mind, ſo far are his Wits run a Woolgathering from it.

And now upon the whole matter I am very ſure of the Victory, which I have allready obtain'd by dint of Argument againſt him, though he may poſſibly run away with the Triumph, and I had much rather loſe ſo fair a cauſe as mine is, then gain a Scandalous Conqueſt, by ſucceeding in his

Victrix cauſa Deis placuit, ſed victa Catoni.

POSTSCRIPT.

I Have two things further to add, which occur now newly to my mind, and are, I think, material to the purpoſe, the Firſt as to the Regulation in generall, the deſign of which ſeems to have been, to diſplace all that were not at that time Communicants of the *Church of England*, that being the intereſt which the Court thought fit at that juncture to encourage: It is not my buſineſs in this place to weigh the Merits of Cauſes or of Perſons, neither do I at all intend by this to reflect upon the Perſons Ejected, as if they were defective in the diſcharge of their truſt, the contrary of which, hating only what concerns my Friend Mr *Hughes*, is that which I did always and do ſtill very firmly believe; but this I ſay, that by this it appears, that it was a Regulation not only made by him, that had a Legall right to do it, of which I have already ſpoken very largely, but it was alſo ſuch a Regulation, as the Laws of this Land, if they did not Expicitely enjoyn, yet they did manifeſtly encourage and abett, it being very incongruous to proſecute the ſame Perſons upon account of their Religion, which was no more then what the Laws put in Execution would certainly have done, and yet at the ſame time to reward them with publick Salaries, for the ſame ſervices, that Members of the Eſtabliſh'd Communion were capable of performing with equall, if not greater advantage to the Houſe, I ſay, greater, in reference to that part of the Governors, to whom their ſervice will always be moſt acceptable, who have without queſtion, the moſt of the Gentleman in them, and will at the long run, prove the moſt generous Benefactors to us, if they be not diſobliged, for he hath no Honour that hath no reſentment. I appeal to the greateſt favourers of Mr. *H.* and others, if a ſet of *Papiſts* were put into the Houſe, to fill up the reſpective Offices belonging to it, whether they would then grumble at a Royall Regulation, whether they would not allow the King

a Power of Viſiting in this Caſe? whether they would not agree, that the Ejection of ſuch Perſons, was not only neceſſary, but Legall too? and Laſtly whether they would not think it a very unreaſonable thing, that they that ſtand impeached and Condemned by ſo many Laws, ſhould be Encouraged with Salaries out of the publique Revenue, and preferred before thoſe, upon whom the Laws never look but with a kind and favourable aſpect? I do not in this make any odious compariſon betwixt a *Papiſt* and *Proteſtant* Diſſenter, as if the one were as much to be diſcountenanced as the other, but yet I challenge any man to ſhew a reaſon, why a *Papiſt* ſhould be Ejected, which will not, in the dry conſequence and Inference of the matter, affect and reach a *Proteſtant* Diſſenter, to whoſe diſſent I cannot help it that the Laws are no friends, and that he cannot be encouraged in an affair of this Nature, without ſomething that ſquints towards a diſpenſing Power. Not to preferr can never be thought a piece of Perſecution, and the Government will always chuſe its own Servants, as it is but reaſon it ſhould, ſo that this Regulation being made by a Legall Power & for a reaſon agreeable to the Laws, I think it hath all the Validity and Strength, that any Act in the World can be ſuppoſed to have.

Secondly, the ſecond thing I muſt Suggeſt, is only in Fayrneſs to the other Side, that I may not ſeem to conceal or ſmuggle any thing, that hath a favorable Appearance towards them. It is, that our Orders run only during Pleaſure, therefore the Queſtion is, upon the Diſſolution of the Commiſſion, whether that pleaſure be not diſſolved, and I anſwer not, becauſe firſt *durante beneplacito* ſignifies till that Court otherwiſe determine, which they never did. Secondly, though theſe expreſs words had not been inſerted, yet the thing it ſelf was plainly ſuppoſed, we being all of us at the pleaſure of that Court and of the King from whom they derived their Commiſſion, and holding by no other Tenure, ſo that all the queſtion here is, whether all their Acts were vacated by their diſſolution, which I conceive they were not, and I hope I have given ſome reaſon for it.

Thirdly and Laſtly, that pleaſure, being a reall Power, can never dye, like matter and motion that are always equall and the ſame taken in the groſs, neither can a greater pleaſure be ſwallowed up in a leſs, any more then a greater quantity can be, and for this reaſon the pleaſure or Power of the Commiſſioners can never be the pleaſure or Power of the Court of Aldermen, but returns back again to its Fountain the King, to whoſe Royall Juſtice, Goodneſs and Wiſdom, I am very willing to referr my Cauſe, if Mr *Hughes* think fit to make his appeal to it, In the mean time I would willingly ſee a reaſon, before I abandon and relinquiſh my poſſeſſion.

FINIS.